IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1287 of 2002
With
CIVIL APPLICATION NO. 4392 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA INSURANCE CO LTD.

Versus

HEIRS OF LRS BHIKHABHAI NARSHIBHAI MAKWANA

Appearance:
1. First Appeal No. 1287 of 2002
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
..... for Respondent No. 1
MR MB PARIKH for Respondent No. 1/1-1/6
SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. On joint request by learned advocate for the parties, this appeal is taken up today for final hearing as the only point involved in the appeal is the imposition of 50 % penalty on the compensation amount awarded by Learned Commissioner For Workmen's Compensation, Labour Court, Amreli.

2. The appellant Insurance Company in this appeal has challenged the imposition of 50 % penalty amount on the amount of compensation awarded to the heirs of the deceased workman. It has been submitted by Mr. P.V. Nanavati, learned advocate for the appellant that, it is not open to the authority to impose 50 % penalty on the Insurance Company in view of the judgment reported in case of VED PRAKASH GARG VS. PREMI DEVI AND OTHERS, A.I.R. 1997, S.C. PG 3854 and the liability of the Insurance Company would restrict only to the extent of the damage suffered arising under the Workmen's Compensation Act, and the Insurance Company would be required to pay only the principal amount of the compensation computed by the Commissioner and the interest levied under section 4-A (3) (b).

3. Mr. M.B.Parikh, learned advocate for the respondent does not dispute the position of the law being as above.

4. In view of the above legal position the present appeal which is directed only against imposition of 50 % penalty is required to be allowed, and the impugned order to that extent set aside, with a clarification that the workman may recover this amount from the employer.

5. The impugned order to the extent that the Insurance Company shall pay 50 % penalty amounting to Rs.98,530/- is hereby set aside and quashed.The said amount deposited by the Insurance Company on filing of this appeal is directed to be refunded to the Insurance Company, forthwith.

6. It is also clarified that, out of the amount of Rs.2,59,006/- which also include cost & interest, and amount of Rs.59,006/- be paid to application No.1 - the widow and the mother of minor claimants No. 1/1 to 1/6 by an account payee cheque, whereas remaining amount of Rs.2-00 lakh be invested in Fixed Deposit with State Bank of India, in the name of applicant no.1 mother, initially

for a period of seven years and the interest accruing thereon be paid to the applicant-mother every quarterly by account payee cheque.

7. Appeal allowed accordingly.

8. In view of the main appeal being disposed of, civil application does not survive,and is disposed of accordingly.

Dt: 18-7-2002 (N.G. Nandi, J)

(H.K. Rathod,J)

/vgn